IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17081 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GANPAT @ GAPO S/O. SHANTILAL CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 17081 of 2004

MR.B K.RAJ for Petitioner No. 1

MS HANSA B PUNANI AGP for Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 07/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the

order passed against him by the District Magistrate, Baroda, on 11th of August, 2004, in exercise of powers conferred upon him under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger from 11th of August, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of material for passing the order of detention against the petitioner. Firstly, the detaining authority took into consideration three criminal cases registered against the petitioner under the Bombay Prohibition Act, and secondly the detaining authority took into consideration two in-camera statements of witnesses, as recorded by the sponsoring authority on 17th of July, 2004 and verified by the detaining authority on 9th of August, 2004, and the identity of the witnesses were not disclosed by the detaining authority, claiming privilege under Section 9(2) of the PASA Act.

3. Three cases came to be registered against the petitioner for the breach of the Bombay Prohibition Act, on 12th of April, 2004, 30th of May, 2004 and 3rd of July, 2004, all before Vaghodia Police Station. It was alleged that in the first offence, the petitioner was found in possession of country liquor to the extent of 63 liters, in second case 21 liters an in third case 12 liters of country liquor were found in possession of the petitioner. The detaining authority considered exhaustively and thoroughly investigation papers in the said three cases registered against the petitioner and came to the conclusion that the petitioner was engaged in the activities of storing, selling and transporting of prohibited country liquor. The detaining authority also came to the conclusion that the petitioner was bootlegger within the meaning of the PASA Act.

4. The detaining authority also placed reliance upon two in-camera statements, out of which, first witness referred to an incident occurred on 2nd of July, 2004. The witness was waiting for a vehicle at bus stand of village Nimeta at about 10.15 a.m. the petitioner and his two accomplices approached the witness and stated that the witness was providing information to the police about illegal activities of the petitioner in dealing with prohibited liquor. The witness denied to have provided any such information to the police. The conversation resulted in altercation and petitioner and

his accomplices started abusing the witness and beating him. The shirt worn by the witness was torn out and Rs. 45 kept in the pocket of the witness were taken out by them. The petitioner and his accomplices further threatened the witness that if further information was provided to the police, the legs of the witness will be broken. A crowd of vehicle drivers and shop keepers was formed there, but none dared to rescue the witness. Ultimately, by act of supplication, the witness could get him free from the petitioner and his accomplices though the petitioner and his accomplices threatened that if the witness provided any information to the police, he would be done to death. Due to fear of the petitioner, no complaint came to be lodged by the witness before the police. According to witness, the petitioner and his associates were head-strong persons. The second witness referred to an incident occurred on 6th of July, 2004. The witness was standing at the bus-stand of village Nimeta with his hired vehicle at 11.30 a.m. In the meantime, petitioner and his accomplices approached the witness and asked him to go to Baroda in the vehicle of the witness. The petitioner had a bag in his hand which was smelling of liquor. Therefore, the witness refused to give his vehicle on hire. The petitioner and his accomplice forcibly attempted to sit in the said vehicle and when the witness refused to take them to Baroda, the petitioner and his accomplice caught hold of the witness and started beating him with fists and kicks. The petitioner took out weapon like knife and aimed the same at the throat of the witness. The vehicle drivers and shop keepers formed a crowd near the place of incident, but none dared to rescue the witness. In the meantime, somebody shouted that the police was coming and, therefore, the petitioner and his accomplices after leaving the witness ran away with the bag, but while going, they threatened the witness that if the witness filed any complaint before the police, it would be become very difficult for the witness to pass through the said road.

5. From the above material, the detaining authority came to the conclusion that the activities of the petitioner were detrimental to the maintenance of public order and adversely affecting the public health. The petitioner was headstrong person and was in habit of picking up quarrels with innocent persons. The detaining authority came to the conclusion that the illegal activities of the petitioner were required to be prevented forthwith. After considering the remedies available against the petitioner in general law, the detaining authority came to the conclusion that there was

no other alternative except to detain the petitioner under the PASA Act to prevent the illegal activities of the petitioner forthwith. The detaining authority therefore passed the order of detention against the petitioner, which is under challenge in this petition.

6. Learned Advocate Mr.B.K.Raj for the petitioner and learned AGP HM Prachchhak for the respondents were heard at length.

7. Out of various grounds urged on behalf of the petitioner and opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether there was credible material placed before the detaining authority to come to the conclusion that by the activities of the petitioner, the public order was disturbed and public health was adversely affected.

8. To reach to the subjective satisfaction that bootlegging activities of the petitioner were prejudicial to the maintenance of public order and public health, the detaining authority must rely upon credible and cogent material indicating that the activities of the detenu directly or indirectly were causing or were likely to cause harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or the public health. While undertaking this exercise, the detaining authority must draw a clear line between the cases falling within the category of breach of law and order and the cases falling within the category of breach of public order.

9. Now referring to the three criminal cases filed against the petitioner under the Bombay Prohibition Act, it clearly appears that those cases came to be filed against the detenu because he was found in possession of prohibited country liquor for the breach of the provisions of the Bombay Prohibition Act. Going through the investigation papers, as placed on record, nothing is disclosed to the extent that the activities revealed through the investigation can be branded to be the activities affecting the maintenance of public order or adversely affecting the public health. At the most, the possession of prohibited liquor, which is the allegation against the petitioner, in all the three cases, may be categorized to be the breach of law and provisions of the Bombay Prohibition Act, for which, the petitioner may be tried and punished if found guilty, but surely the act constituting the offence in dealing in prohibited liquor

cannot be said to have affected the even tempo of the life of the community. Therefore, the case filed against the detenu on the ground that he was found in possession of prohibited liquor, have no bearing at all on the question of maintenance of public order.

10. Further while passing the order of detention, the detaining authority must determine the impact, fall out and reach of the activities of the petitioner revealing through the material placed before him. The detaining authority must reach to the subjective satisfaction from the impact of the activities that whether the potentiality of the alleged activities were capable of disturbing the public order. Two incidents, as narrated through in-camera statements, appear to be more individual dispute than to involve the society at large or disturbing the even tempo of the life of the community. The potentiality of the act alleged through in-camera statements, even from the bare reading of the same, do not disclose capability to disturb the even tempo of the life of the community or the society at large or section thereof. No widespread danger or harm to the society could be inferred from the statements of the witnesses as to prejudicial to the maintenance of public order or adversely affecting the public health. These incidents may be breach of law and order, can be taken care of general law.

11. In the matter of ASHOKBHAI JIVRAJ @ JIVABHAI SOLANKI vs. POLICE COMMISSIONER, SURAT and Ors. as reported in 2000 (1) GLH 393, in the Division Bench of this Court after considering many decisions of the Apex Court, observed in paras 20 and 21 as under :

"20 The Division Bench then considered the law laid down by the Apex Court in Piyush Kantilal v. Commissioner of Police, Ahmedabad City, AIR 1989 SC 491 and Two. Devaki vs. State of Tamil Nadu, AIR 1990 SC 1086. In Piyush Kantilal, similar circumstances were before the detaining authority and it was alleged that detention of the detenu was necessary in order to prevent activities of the detenu in maintenance of public order. Similarly in Two. Devaki, panic amongst people in the hall in which the incident took place and in nearby vicinity was highlighted. It was also alleged that people were scared and had run helter-skelter. In spite of such allegations, the Supreme Court held that they were not cases of maintenance of public order and hence, no action of preventive

detention was uncalled for.

21. The Division Bench, following the above cases, observed that in the opinion of the Supreme Court, the selective phrases in the statements would not take out the case from maintenance of law and order to that of maintenance of public order and as power of detention, could not be used for maintenance of law and order, but only for public order, the order of detention made in such circumstances could not be upheld.

Again in Mustakmiya Jabbarmiya Shaikh vs. M.M. Mehta, Commissioner of Police and Others, 1995 (2) GLR 1268 (Sc), the Supreme Court considered the relevant decisions on point including the decisions in Arun Ghosh v. State of West Bengal, 1979 (1) SCC 98 and held that stray incidents would not affect "public order" and order of detention cannot be passed in such cases."

12. The present set of facts are squarely covered by the above decision of this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki (supra) and therefore the subjective satisfaction arrived at by the detaining authority in respect of disturbance of public order by the alleged activities of the petitioner cannot be said to be legal, valid and in accordance with law. The order under challenge, therefore, is required to be quashed and set aside on this ground alone.

13. In the result, the petition is allowed. The order passed by the District Magistrate, Baroda, on 11th of August, 2004, against the petitioner in exercise of powers under Section 3(2) of the PASA Act is hereby quashed and set aside. The petitioner - Ganpat @ Gapo S/o Shantilal Chauhan is hereby ordered to be set at liberty forthwith if she is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair